

The Ohio Beef Corporation and United Food and Commercial Workers Union, Local No. 626, AFL-CIO, CLC. Case 8-CA-26093

August 29, 1994

DECISION AND ORDER

BY MEMBERS STEPHENS, DEVANEY, AND
BROWNING

Upon a charge filed by the Union on January 28, 1994, the General Counsel of the National Labor Relations Board issued a complaint on March 14, 1994, against The Ohio Beef Corporation (the Respondent) alleging that it has violated Section 8(a)(1) and (5) of the National Labor Relations Act. Subsequently, the Respondent filed an answer to the complaint, but withdrew the answer on July 8, 1994.

On July 25, 1994, the General Counsel filed a Motion for Summary Judgment with the Board. On July 28, 1994, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. On August 4, 1994, the Charging Party filed a brief in support of the Motion for Summary Judgment. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

Sections 102.20 and 102.21 of the Board's Rules and Regulations provide that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively notes that unless an answer is filed within 14 days of service, all the allegations in the complaint will be considered admitted. Further, the undisputed allegations in the Motion for Summary Judgment disclose that the Respondent has withdrawn its answer. Such a withdrawal has the same effect as a failure to file an answer, i.e., the allegations in the complaint must be considered to be admitted to be true.¹ Furthermore, the Respondent, by its representative, on its withdrawal of the answer on July 8, 1994, acknowledged its understanding that the General Counsel would be filing a Motion for Summary Judgment.

Accordingly, based on the withdrawal of the Respondent's answer, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent, an Ohio corporation, with an office and place of business in Sandusky, Ohio, has been engaged in the operation of a meatpacking plant. Annually, the Respondent, in conducting its business operations, sold and shipped from its Sandusky, Ohio facility goods valued in excess of \$50,000 directly to points outside the State of Ohio. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

The following employees of the Respondent (the unit) constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All inside employees handling meat and meat by-products, including lead persons, but excluding all office employees, truck drivers, supervisory forces, engineers, maintenance employees, janitors, barn men, security guards, or Company store employees and supervisors as defined in the Act.

Since about June 1, 1993, and at all material times, the Union has been the designated exclusive collective-bargaining representative of the unit, and since then the Union has been recognized as the representative by the Respondent. This recognition has been embodied in a collective-bargaining agreement which, by its terms, is effective from June 21, 1993, to November 8, 1997. At all times since June 1, 1993, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the unit.

About December 2, 1993, the Union requested that the Respondent bargain collectively about the effects of its decision to close its facility. These subjects relate to the wages, hours, and other terms and conditions of employment of the unit and are mandatory subjects for the purposes of collective bargaining. Since about January 12, 1994, the Respondent has failed and refused to bargain collectively about these subjects. About October 20, 1993, and continuing thereafter, the Respondent repudiated the terms of its collective-bargaining agreement with the Union by refusing to meet with the Union regarding grievances filed by the Union on October 20, 1993, concerning vacation pay, health and welfare matters, injury pay, and other compensation and benefits due employees pursuant to the Respondent's closure of its facility.

¹ See *Maislin Transport*, 274 NLRB 529 (1985).

CONCLUSION OF LAW

By the acts and conduct described above, the Respondent has been failing and refusing to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (5) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. As a result of the Respondent's unlawful failure to bargain in good faith with the Union about the effects of its decision to close the facility, the terminated employees have been denied an opportunity to bargain through their collective-bargaining representative. Meaningful bargaining cannot be assured until some measure of economic strength is restored to the Union. A bargaining order alone, therefore, cannot serve as an adequate remedy for the unfair labor practices committed.

Accordingly, we deem it necessary, in order to effectuate the purposes of the Act, to require the Respondent to bargain with the Union concerning the effects of closing its facility on its employees, and shall accompany our order with a limited backpay requirement designed both to make whole the employees for losses suffered as a result of the violations and to recreate in some practicable manner a situation that the parties' bargaining position is not entirely devoid of economic consequences for the Respondent. We shall do so by ordering the Respondent to pay backpay to the terminated employees in a manner similar to that required in *Transmarine Corp.*, 170 NLRB 389 (1968).

Thus, the Respondent shall pay its terminated employees backpay at the rate of their normal wages when last in the Respondent's employ from 5 days after the date of this Decision and Order until occurrence of the earliest of the following conditions: (1) the date the Respondent bargains to agreement with the Union on those subjects pertaining to the effects of the closing of its facility on its employees; (2) a bona fide impasse in bargaining; (3) the Union's failure to request bargaining within 5 days of the date of this Decision and Order, or to commence negotiations within 5 days of the Respondent's notice of its desire to bargain with the Union; (4) the Union's subsequent failure to bargain in good faith; but in no event shall the sum paid to these employees exceed the amount they would have earned as wages from the date on which the Respondent terminated its operations, to the time they secured equivalent employment elsewhere, or the date on which the Respondent shall have offered to bargain in good faith, whichever occurs sooner; pro-

vided, however, that in no event shall this sum be less than the employees would have earned for a 2-week period at the rate of their normal wages when last in the Respondent's employ. Backpay shall be based on earnings which the terminated employees would normally have received during the applicable period, less any net interim earnings, and shall be computed in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

In view of the fact that the Respondent's facility is currently closed, we shall order the Respondent to mail a copy of the attached notice to the Union and to the last known addresses of its former employees in order to inform them of the outcome of this proceeding.

Furthermore, having found that the Respondent has repudiated the terms of its collective-bargaining agreement by refusing to meet with the Union regarding grievances filed by the Union on October 20, 1994, we shall order the Respondent to honor the terms of the collective-bargaining agreement effective, by its terms, from June 21, 1993, to November 8, 1997, and to meet with the Union regarding the grievances.

ORDER

The National Labor Relations Board orders that the Respondent, The Ohio Beef Corporation, Sandusky, Ohio, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing, since about January 12, 1994, to bargain collectively with the United Food and Commercial Workers Union, Local No. 626, AFL-CIO, CLC, about the effects on the unit employees of its decision to close the facility. The unit includes the following employees:

All inside employees handling meat and meat by-products, including lead persons, but excluding all office employees, truck drivers, supervisory forces, engineers, maintenance employees, janitors, barn men, security guards, or Company store employees and supervisors as defined in the Act.

(b) Failing and refusing, since about October 20, 1993, to bargain collectively with the Union by repudiating the terms of its collective-bargaining agreement with the Union, effective by its terms from June 21, 1993, to November 8, 1997, by refusing to meet with the Union regarding grievances filed by the Union on October 20, 1993, concerning vacation pay, health and welfare matters, injury pay, and other compensation and benefits due employees pursuant to the Respondent's closure of its facility.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, meet and bargain with the Union concerning the effects on the unit employees of the Respondent's decision to close its facility.

(b) Honor the terms of the collective-bargaining agreement with the Union, effective by its terms from June 21, 1993, to November 8, 1997, and meet with the Union regarding grievances filed by the Union on October 20, 1993, concerning vacation pay, health and welfare matters, injury pay, and other compensation and benefits due employees pursuant to the Respondent's closure of its facility.

(c) Pay limited backpay to the unit employees in the manner set forth in the remedy section of this decision.

(d) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(e) Sign copies of the attached notice marked "Appendix."² Respondent shall mail an exact copy of the signed notice to all unit employees at their last known address and to the Union at its business address.

(f) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

²If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT fail or refuse, since about January 12, 1994, to bargain collectively with the United Food and Commercial Workers Union, Local No. 626, AFL-CIO, CLC, about the effects on the unit employees of our decision to close the facility. The unit includes the following employees:

All inside employees handling meat and meat by-products, including lead persons, but excluding all office employees, truck drivers, supervisory forces, engineers, maintenance employees, janitors, barn men, security guards, or Company store employees and supervisors as defined in the Act.

WE WILL NOT fail or refuse, since about October 20, 1993, to bargain collectively with the Union by repudiating the terms of our collective-bargaining agreement with the Union, effective by its terms from June 21, 1993, to November 8, 1997, by refusing to meet with the Union regarding grievances filed by the Union on October 20, 1993, concerning vacation pay, health and welfare matters, injury pay, and other compensation and benefits due employees pursuant to the closure of our facility.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, meet and bargain with the Union concerning the effects on the unit employees of our decision to close the facility.

WE WILL honor the terms of the collective-bargaining agreement with the Union, effective by its terms from June 21, 1993, to November 8, 1997, and meet with the Union regarding grievances filed by the Union on October 20, 1993, concerning vacation pay, health and welfare matters, injury pay, and other compensation and benefits due employees pursuant to the closure of our facility.

WE WILL pay limited backpay to the unit employees in the manner set forth in the decision of the National Labor Relations Board.

THE OHIO BEEF CORPORATION